

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 202 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not? Yes
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge?

No

COMMISSIONER OF INCOME TAX

Versus

KHEMANI CHAMBERS

Appearance:

MR BB NAIK for MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 28/04/99

ORAL JUDGEMENT (per A.R. Dave, J.)

At the instance of the revenue, the following question has been referred to this Court by the Income Tax Appellate Tribunal Ahmedabad Bench 'C' under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as the Act).

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee firm was entitled to registration under the Income-tax Act, 1961 in spite of the fact that the profits were not credited during the relevant previous year ended on 31st March 1975?"

2. Learned Counsel Shri BB Naik has appeared for the applicant whereas nobody has appeared for the respondent assessee.

3. The facts in a nutshell giving rise to the present reference are as under:-

4. The respondent assessee is a partnership firm who had applied for its registration for the Assessment Year 1975-76. Previous year for the relevant assessment year was ending on 31.3.1975. The application for registration of the firm was rejected by the Assessing Officer on the ground that two partners of the firm were nominees of other two partners. It was also noted by the A.O. that the declaration made in Form No. 11 was not correct and profits for the previous year were not credited in the respective accounts of the partners.

5. Being aggrieved by the order whereby registration of the firm was refused, the respondent assessee had filed an appeal before the Appellate Assistant Commissioner of Income-tax. The appeal was allowed and registration was granted to the assessee firm.

6. Being aggrieved by the order passed by the A.A.C., the revenue had filed an appeal before the Tribunal. Learned Members of the Tribunal differed on the point of registration of the firm and therefore, as per the provisions of sec. 255(4) of the Act, the case was referred to the third member of the Tribunal. The Vice-President of the Tribunal, upon the point being referred to him, came to the conclusion that registration ought to have been granted to the assessee firm and thereby he agreed with the view expressed by the Judicial Member.

7. The question which is to be considered by us is with regard to consequences of not crediting profit to the accounts of the partners during the relevant previous year on the registration of the firm. In the instant case, registration of the firm for the Assessment Year 1975-76 was rejected mainly on the ground that profit for

the relevant previous year was not credited to the accounts of the partners. So far as other grounds on which registration was refused by the A.O. are concerned, they were dealt with by the higher authorities and were ultimately decided in favour of the assessee and therefore at this juncture we are not concerned with other points.

8. Relevant provisions with regard to registration of the firm are in sec. 184 of the Act and in rule 22 of the Income-tax Rules, 1962 (hereinafter referred to as the Rules). According to the provisions of sec. 184 of the Act, the partnership should be evidenced by an instrument and the individual shares of the partners should be specified in the instrument. There is no dispute with regard to the evidence of the partnership and specification of shares of individual partners in the instrument of partnership. The partnership was also held to be genuine by the Tribunal in the instant case. Though the application for registration should be made before the end of the previous year relevant to the assessment year in respect of which registration is sought, an application made after the end of the previous year can also be entertained as per proviso to sec. 184 of the Act.

9. So far as the application for registration of the firm is concerned, the relevant rule is rule 22 of the Rules. As per the provision of the said rule read with sec. 184 of the Act, an application can be made for registration of the firm for the previous year either before the end of the previous year or after the end of the previous year. Where there is no change in the constitution of the firm or the shares of the partners during the previous year and when the application is to be given before the end of the relevant previous year, an application in Form No. 11 is to be submitted by the assessee during the previous year. The relevant portion of Form No. 11 is reproduced hereinbelow:

"4. We do hereby certify that the profit (or
loss, if any) of the

previous year were/will be
period up to the date of dissolution were/will be

divided or credited as shown in the Schedule and
that the information given above and in the
Schedule is correct."

Upon perusal of the above-referred clause 4 of Form No. 11, it is very clear that the partners have to certify that the profit or loss, if any, of the previous year is either divided or credited as shown in the Schedule or the said profit or loss is to be divided or credited as shown in the Schedule forming part of the said form. Thus the form envisages two possibilities, either profit or loss has already been divided or credited as shown in the Schedule or the partners assure to the authority under clause 4 that the profit or loss shall be divided amongst the partners as per their shares shown in the Schedule.

10. The above-stated legal position clearly denotes that it is not obligatory on the part of the assessee to divide the amount of profit amongst the partners and credit the same to the accounts of the partners of the assessee firm before Form No. 11 is submitted to the authority. In other words, it is very clear that when, before conclusion of the relevant previous year, an application for registration of the firm is given by the assessee, the Act does not expect the assessee firm to divide the profit of the firm amongst the partners on or before the date on which the form is submitted. The scheme of the Act, as stated hereinabove, sounds absolutely logical for the reason that if an application for registration in Form No. 11 is submitted before completion of the previous year, the assessee cannot be expected to know the amount of profit earned during the previous year at the stage of filing Form No. 11. Normally, accounts are finalised after completion of the previous year. Complete financial position or profit to be divided amongst the partners can be ascertained only at the end of the previous year. If the application for registration of the firm is submitted before the completion of the previous year, needless to say that the assessee firm cannot make any statement with regard to the amount of profit ascertained during the previous year because the previous year is not over by the time when the application in Form No. 11 is filed. For the said reason clause 4 of Form No. 11 envisages a possibility where the profit has not been divided amongst the partners and therefore it also reads like "we do certify that the profit (or loss, if any) of the previous year will be divided" If the previous year is over and Form No. 11 is filed after completion of the previous year, one can expect the assessee firm to distribute its profit for the relevant previous year amongst the partners but the firm cannot be expected to distribute its profit amongst the partners when the previous year is

not over.

11. The Assessing Officer in the instant case rejected an application for registration of the firm on several grounds and the one with which we are concerned is with regard to not dividing profit amongst the partners. Upon perusal of sec. 184 of the Act and rule 22 of the Rules, we do not find any provision which prescribes that in the event of filing Form No. 11 before the end of the previous year, profit for the relevant previous year must be divided amongst the partners.

12. In view of the facts stated hereinabove, we are of the view that the assessee firm was entitled to registration under the Act in spite of the fact that profit was not credited to the accounts of the partners during the relevant previous year ending on 31.3.1975 and therefore we answer the question in the affirmative that is to say against the revenue and in favour of the assessee.

The reference accordingly stands disposed of with no order as to costs.

(hn)